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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,846	12/08/2003	Frederic Simonet	06028.0037-00	9233

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EXAMINER

ELHILO, EISA B

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,846

Applicant(s)

SIMONET ET AL.

Examiner

Eisa B. Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-19,31-35,44,45,48-66 and 71-89 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19,31-35,44,45,48-66 and 71-89 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/10/2006.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1 This action is responsive to the amendment filed on May 10, 2006.

2 The cancellation of claims 20-30, 36-43, 46-47 and 67-70 is acknowledged. Pending
claims are 1-19, 31-35, 44-45, 48-66 and 71-89.

3 Claims 1-19, 31-32, 44-45, 50-66 and 71-89 stand rejected under 35 U.S.C. 102(b) as
being anticipated by Cottard et al. (US' 514 A1) for the reasons set forth in the previous office
action mailed on November 10, 2005.

4 Claims 33-35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et
al. (US' 514 A1) in view of Laurent et al. (US' 431 A1), for the reasons set forth in the previous
office action mailed on November 10, 2005.

5 Claims 48-49 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cottard et
al. (US' 514 A1) for the reasons set forth in the previous office action mailed on November 10,
2005

Response to Applicant's amendment Arguments

6 Applicant's arguments filed 5,10,2006 have been fully considered but they are not
persuasive.

With respect to the rejection of claims 1-19, 31-32, 44-45, 50-66 and 71-89 under 35
U.S.C. 102(b) as being anticipated by Cottard et al. (US' 514 A1), Applicant argues that Cottard
fails to teach a composition comprising at least one cationic associative polymers and nonionic
cellulose-base compound not comprising a fatty chain as claimed. Applicant also argues that the
eight-page passage of Cottard et al. can not be said to teach the claimed composition. Applicant
further argues that the Example of Cottard et al. does not teach a composition as claimed.

The examiner respectfully disagrees with the above arguments because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. “*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Iemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989). Further, “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegeaal Bros. v. Union Oil Co. of California*, 824 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ”When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claims is known in the prior art.” *Brown v. 3M*, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001). In this case Cottard et al. (US’ 514 A1) clearly teaches a composition comprising a) oxidation bases (see page 6, formula I), b) cationic associative polymers of quaternized cellulose modified by groups comprising at least one fatty chain (see page 5, paragraph, 0101), c) cellulose base compounds not comprising fatty chain such as hydroxyethylcellulose and hydroxypropylcellulose (see page 17, paragraphs, 0340 and 0341) and d) cationic polymers such as dimethyldiallylammonium chloride (see page 10 paragraph, 0206). Therefore, the rejection under 102(b) is proper and maintained.

With respect to the rejection of claims 33-35 under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US' 514 A1) in view of Laurent et al. (US' 431 A1), Applicant argues that the examiner has not established a prima facie case of obviousness because Cottard et al. teaches cationic polymers that do comprise, rather than do not comprise a C8-C30 fatty chain as claimed. Applicant also argues that Cottard et al. teaches away from using thickeners such as hydroxyethylcelluloses that impeding "a results of intense and chromatic shades of low selectivity and good fastness".

The examiner respectfully disagrees with the above arguments for the same reasons as mentioned above. Further, Cottard et al. clearly suggests the use of cellulose derivatives such as hydroxyethylcelluloses and hydroxypropylcelluloses in the dyeing composition for adjustment of rheology (see page 17, paragraph, 0340), and, thus, there is a clear suggestion and sufficient motivation to one having ordinary skill in the art to incorporate the cellulose derivatives in the dyeing composition for adjusting the rheology. Therefore, Cottard et al. do not teach away from using thickeners such as hydroxyethylcelluloses.

With respect to the rejection of claims 48-49 under 35 U.S.C. 103(a) as being unpatentable over Cottard et al. (US' 514 A1). Applicant argues that the examiner has not established a prima facie case of obviousness because there is no motivation to modify the mounts of the polymers of Cottard to arrive at the present claims when Cottard does not teach the polymers recited in the claimed invention.

The examiner respectfully disagrees with the above arguments because Cottard et al. teaches the claimed polymers as shown and mentioned by the examiner in the above statements.

9 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eisa Elhilo
Primary Examiner
Art Unit 1751

June 27, 2006